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Paper No.

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~~In re Application of
Pankaj Malhotra, et al.
Application No. 09/132,567
Filed: August 11, 1998
Attorney Docket No. 0013~~

~~In re Application of
Pankaj Malhotra, et al.
Application No. 09/735,291
Filed: July 28, 2000
Atty Docket No. 1413-13CPA~~

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JAN 24 2001

**OFFICE OF PETITIONS
A/C PATENTS**

DECISION GRANTING PETITION

This is a decision on the petition filed January 3, 2001, requesting that a Continued Prosecution Application (CPA) deposited July 28, 2000, based on prior application No. 09/132,567 be treated as an application under 37 CFR 1.53(b) and accorded a filing date of July 28, 2000.

A review of the record discloses that application papers addressed to Box CPA included, *inter alia*, (1) a request for a Continued Prosecution Application (CPA) under 37 CFR 1.53(b) of prior application No. 09/132,567, (2) a complete specification and drawings, and (3) a declaration under 37 CFR 1.63. However, a request for a continued application is handled in accordance with guidelines published on September 8, 1998, at 1214 O.G. 32. Specifically, in view of the conflicting request, the papers deposited July 28, 2000, were treated as having been improperly filed under 37 CFR 1.53(d).

Accordingly, in response to Notice of Improper CPA Filing mailed December 7, 2000, the present petition was filed. Petitioners request, in effect, that the request for a CPA under 37 CFR 1.53(d) be disregarded and that the application be treated as a continuation application under 37 CFR 1.53(b), using the specification, drawings and declaration from the prior application filed July 28, 2000.

Upon further review of the application file it was discovered that the declaration under 37 CFR 1.63 filed July 28, 2000, is not signed by joint inventor Michael Segal. Consequently, the application papers filed July 28, 2000 are incomplete under 37 CFR 1.51(a) without an executed oath or declaration under 37 CFR 1.63.

The petition is granted. However, an oath or declaration signed by joint inventor Michael Segal in compliance with 37 CFR 1.63 is required in this application. Applicants are reminded that where

inventors sign separate declarations, the names of all the joint inventors should be set forth.

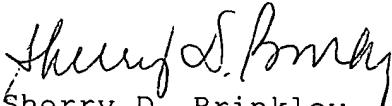
Applicants are given ONE MONTH from the date of this decision to file an oath or declaration complying with 37 CFR 1.63 and to pay the \$130.00 surcharge set forth in 37 CFR 1.16(e). This time period may be extended pursuant to 37 CFR 1.136(a). The oath or declaration should identify the specification to which it is directed by reference to the above application number and filing date. The response should be directed to the attention of Initial Patent Examination Division. Failure to respond will result in the abandonment of this application.

The original request for a CPA application, including the specification and drawings filed July 28, 2000, and the petition filed January 3, 2001, have been removed from the file of the prior application and have been assigned application No. 09/735,291. All future correspondence concerning the continuing application filed July 28, 2000 should be directed to application No. 09/735,291. A copy of the CPA request filed July 28, 2000 and the petition filed January 3, 2001 will be retained in Application No. 09/132,567 in order to make the record whole therein. The \$690.00 CPA filing fees paid on July 28, 2000 and the \$130.00 petition fee paid January 3, 2001, in Application No. 09/132,567 will be reapplied to Application No. 09/793,291.

Prior application No. 09/132,567 will then be forwarded to the Files Repository.

Application No. 09/735,291 will be returned to Initial Patent Examination Division to await the response required herein and for further processing with a filing date of July 28, 2000, as a continuation application under 37 CFR 1.53(b), not an application under 37 CFR 1.53(d), using the specification and drawings filed July 28, 2000 and the declaration filed in response to this decision.

Telephone inquires related to this decision should be directed to the undersigned at (703) 305-9220. Telephone inquires related to OIPE processing should be directed to their hotline at (703) 308-1202.


Sherry D. Brinkley
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

Petitioners' argument is not well taken. While it is conceded that the change of correspondence address shown to have been filed January 19, 2001 was not associated with the present file before the mailing of decision on January 24, 2001, petitioner did not provide any evidence to support the allegation of nonreceipt of the decision mailed January 24, 2001. Clearly, petitioner was aware of the change of correspondence address effective January 19, 2001; however, a review of the written record does not disclose that any attempts, during the over two year period, were made to check the status of the petition filed January 3, 2001. A petition to revive is necessary, and the petition fee will not be refunded.

The correspondence address has been changed in accordance with the copy provided on April 25, 2003. A copy of the decision mailed January 24, 2001 is being enclosed for applicants' convenience.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITION
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: Crystal Plaza Four, Suite 3C23
2201 South Clark Place
Arlington, VA 22202

By Fax: (703) 308-6916
ATTN: Office of Petitions

Any questions concerning this matter may be directed to the undersigned at (703) 305-9220.

Sherry D. Brinkley
Sherry D. Brinkley
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of decision mailed January 24, 2001